

## Message Text

UNCLASSIFIED

PAGE 01 VIENNA 04719 01 OF 02 111212Z  
ACTION L-03

INFO OCT-01 OIC-02 ISO-00 IO-14 AF-10 ARA-14 EA-09  
EUR-12 NEA-10 EB-07 COME-00 AGR-10 STR-04 TRSE-00  
SS-15 NSC-05 SP-02 H-02 PA-02 PRS-01 USIA-15  
CIAE-00 INR-07 NSAE-00 ITC-01 /146 W  
-----111222Z 037224 /42

R 101916Z JUN 77  
FM AMEMBASSY VIENNA  
TO SECSTATE WAHSDC 0000

UNCLASS SECTION 1 OF 2 VIENNA 4719

E.O. 11652: N/A  
TAGS: ONCON, UNCITRAL  
SUBJECT: UNCITRAL PLENARY, MAY23-JUNE17-FIRST WEEK

1. SUMMERY: DURING FIRST WEEK CONFERENCE CONSIDERED CHAPTERS I AND II AND BEGAN CHAPTER III OF DRAFT CONVENTION ON INTERNATIONAL SALE OF GOODS (CISG-SEE A/CN.9/116). FEW CHANGES HAVE BEEN MADE IN WORKING GROUP TEXT, AND RESULTS OF DISCUSSION THUS FAR GENERALLY SATISFACTORY TO USDEL.

2. CONFERENCE ATTENDED BY DELEGATIONS FROM 26 STATES, OBSERVERS FROM 9 STATE AND 4 INTERNATIONAL ORGANIZATIONS. MORE DELEGATIONS EXPECTED TO ARRIVED LATER.

3. AT FIRST MEETING, CHARIERED BY DUY (UN LEGAL COUNSEL), GUERIOS (BRAZIL) WHO WAS ILL, WAS ELECTED CHAIRMAN IN ABSENTIA. COMMISSION WILL MEET AS COMMITTEES OF THE WHOLE I AND II (C/W I, II), AND MEET AS COMMISSION ONLY TO APPROVE C/W REPORTS. ADENIJI (NIGERIA), BYERS (AUSTRALIA), MICHIDA (JAPAN) ELECTED VICE CHAIRMAN OF COMMISSSION, KOPAC (CZECHOSLOVAKIA) RAPPORTEUR.

4. C/W I ELECTED EROSI (HUNGARY) CHAIRMAN, BARRERA-GRAF (MEXICO)  
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PAGE 02 VIENNA 04719 01 OF 02 111212Z

RAPPORTEUR. PERMANENT DRAFTING GROUP ESTABLISHED BY C/W I INCLUDES US, COLUMBIA, CZECHOSLAOVAKIA, FRANCE, MEXICO, NIGERIA, SINGAPORE, USSR AND UK.

5. CHAPTER I (SHPERE OF APPLICATION) DISCUSSION, ESPECIALLY REGARDING WISDOM OF FOLLOWING TEXT OF PRES-CRIPTION CONVENTION, HAD LITTLE EFFECT ON CISG TEXT.

C/W I TOOK FOLLOWING ACTIONS ON CHAPTER I:

A. ARTICLE 1 (APPLICABILITY TO PARTIES); WORKING GROUP TEXT RETAINED.

B. ARTICLE 2 (NON-APPLICABILITY TO CERTAIN SALES CONTRACTS): TEXT RETAINED. EXTENSIVE DISCUSSION OF BEST DRAFTING TO EXCLUDE CONSUMER SALES; RETENTION OF PARA (E) (EXCLUSION OF SHIPS, VESSELS, AIRCRAFT); RETENTION OF PARA (F) (EXCLUSION OF ELECTRICITY) OR ITS EXPANSION TO INCLUDE GAS, AS SUGGESTED BY USSR.

C. ARTICLE 3 (NON-APPLICABILITY TO LABOR OR MATERIALS SUPPLY CONTRACTS); TEXT RETAINED.

D. ARTICLE 4 (APPLICABILITY WHEN CHOSEN BY PARTIES): INITIALLY DEFERRED UNTIL CONSIDERATION OF ARTICLE 13; DELETED FOLLOWING PRELIMINARY DECISION TO PERMIT EXTENSION OF CISG TO DOMESTIC AS WELL AS INTERNATIONAL SALES. USDEL VOTED TO DELETE FOLLOWING REJECTION FINNISH REDRAFT.

E. ARTICLE 5 (EXCLUDABILITY AND VARIABILITY OF CISG

PROVISIONS); TEXT RETAINED AFTER REJECTION OF AUSTRIAN PROPOSAL TO COVERT CONVENTION INTO MODEL LAW.

\*. ARTICLE 6 ("PLACE OF BUSINESS"); PARAS (A) AND (B) RETAINED. NORWEGIAN PROPOSAL TO TRANSFER PARA (C) TO A NEW PARA (3) OF ARTICLE 1 SENT TO DRAFTING GROUP.  
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PAGE 03 VIENNA 04719 01 OF 02 111212Z

G. ARTICLE 7 (APPLICABILITY ONLY TO CONTRACTUAL RIGHT AND OBLIGATIONS; INDUSTRIAL PROPERTY CLAIMS); PARA (1) RETAINED IN SUBSTANCE, SENT TO DRAFTING GROUP; PARA (2) DISCUSSIONS DEFERRED TO ARTICLE 25.

6. C/W I TOOK FOLLOWING ACTIONS ON CHAPTER II (GENERAL PROVISIONS):

A. ARTICLE 8 (USAGES): TEXT RETAINED, AFTER FLURRY INITIATED BY CZECHOSLAVAKIA REGARDING INSECURITY OF TRANS-ACTIONS RESULTING FROM ACCEPTANCE OF USAGES AS PART OF CONTRACT, AND DISCUSSION OF POSITICALLY SUSPECT ORIGIN OF USAGES. PROPOSAL TO REINTRODUCE SUBSTANCE OF ARTICLE 9 (3) OF UNIFORM LAW ON INTERNATIONAL SALE-ULIS DEFEATED; US AGAINST REINTRODUCTION.

B. ARTICLE 9 ("FUNDAMENTAL BREACH"): SENT TO DRAFTING GROUP TO INCORPORATE PHILIPPINE PROPOSAL, SUPPORTED BY US,

TO REWARD LAST CLAUSE TO SUGGEST BURDEN OF PROOF IS ON PARTY IN BREACH. ELABORATE FRG DEFINITIONS OF FUNDAMENTAL BREACH BEATEN BACK.

C. ARTICLE 10 (NOTICES): SENT TO DRAFTING GROUP, WITH EXCEPTION OF QUESTION (PARA 2) REGARDING FROM OF DECLARATION OF AVOIDANCE, SENT TO ARTICLE 11 SPECIAL WORKING GROUP. US PROPOSAL OF SIDPATCH THEORY OF NOTICES QUESTIONED AND PROVISIONALLY ACCEPTED PENDING LATER DISCOVERY OF APPROPRIATE EXCEPTIONS BEYOND PARA (2).

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PAGE 01 VIENNA 04719 02 OF 02 111146Z  
ACTION L-03

INFO OCT-01 OIC-02 ISO-00 IO-14 AF-10 ARA-14 EA-09  
EUR-12 NEA-10 EB-07 COME-00 AGR-10 STR-04 TRSE-00  
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CIAE-00 INR-07 NSAE-00 ITC-01 /146 W  
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R 101916Z JUN 77  
FM AMEMBASSY VIENNA  
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UNCLAS SECTION 2 OF 2 VIENNA 4719

D. ARTICLE 11 (PROOF OF CONTRACT): REFERRED TO SPECIAL WORKING GROUP: US, BRAZIL, GDR, NIGERIA, SINGAPORE, SWEDEN, USSR. NEITHER USSR NOR US PROPOSAL SUFFICIENT BASIS FOR COMPROMISE, BUT SWEDEN HAS PRODUCED SERIES OF POSSIBLE TEXTS FOR DISCUSSION. USDEL INSISTS EFFECT OF EXCEPTIONS TO ARTICLE II BE NON-APPLICABILITY OF ARTICLE RATHER THAN NULLITY OF CONTRACT (USSR PROPOSAL), HOPES TO RETAIN THEORETICAL POSSIBILITY TO US STATE OF FRAUDS RESERVATION.

E ARTICLE 12 (SPECIFIC PERFORMANCE): TEXT RETAINED.

F. ARTICLE 13 (INTERPRETATION AND APPLICATION): TEXT RETAINED AFTER USSR EFFORT TO REQUIRE APPLICATION OF SELLER'S SUBSTANTIVE RULES WHERE CISG NOT DISPOSITIVE, BY GER TO REFER INSTEAD TO "PURPOSE OF CONTRACT AND INTERDEPENDENCE OF ITS VARIOUS PROVISIONS," AND BY FRG TO REFER TO "GENERAL PRINCIPLES OF CONVENTION."

7. CHAPTER III (OBLIGATIONS OF SELLER), SECTION I (DELIVERY

OF GOODS, HANDING OVER OF DOCUMENTS) DONE FRIDAY AFTERNOON:

A. ARTICLE 14 (GENERAL OBLIGATIONS OF SELLER): TEXT  
RETAINED.

UNCLASSIFIED

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PAGE 02 VIENNA 04719 02 OF 02 111146Z

B. ARTICLE 15 ("DELIVERY"): RETAINED IN SUBSTANCE, REFERRED  
TO DRAFTING GROUP TO INCORPORATE FRG CLARIFICATION RE-  
GARDING SOURCE OF OBLIGATION TO DELIVER GOODS IN  
PARTICULAR PALCE.

C. ARICLE 16 (OBLIGATIONS REGARDING CARRIAGE): TEXT  
RETAINED; USSR PROPOSAL TO MAKE EXCEPTION TO DISPATCH  
THEORY IN PARA (1) NOT SUPPORTED.

D. ARTICLE 17 (TIME OF DELIVERY): TEXT RETAINED AFTER  
CZECHOSLAVAK EFFORT TO DELETE "USAGE".

3. ARTICLE 18 (HANDING OVER DOCUMENTS): TEXT RETAINED  
SUBJECT TO DRAFTING.

F. PROPOSED ARTICLE 18BIS (NOTICE REQUIRED FOR BUYER TO

RELY ON SELLER'S LATER PERFORMANCE ) REJECTED.

8. AT END OF WEEK DESCUSSION WERE, ASTOUNDINGLY, ON  
SCHEDULE. OCCASIONAL DEPARTURES FROM ORDERLY PROCEDURES,  
ESPECIALLY ATTEMPTS TO AMEND FROM THE FLOOR, AND SEVERAL  
EFFORTS TO INTRODUCE COMPLEX MODIFICATIONS OF WORKING

GROUP TEXT WERE BEATED BACK. BY END OF WEEK, INTEGRITY  
OF WORKING GROUP TEXT WAS APPARENTLY GENERALLY ACCEPTED. MEEHAN

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## Message Attributes

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